

# OIL AND GAS LEASE (Paid-Up)

AGREEMENT, made and entered into on August 6, 2007 by and between:

Mark E. Smith and Elvia I. Smith, husband and wife, as tenants by entirety

8 Belaire Drive

Horseheads, NY 14845

Party of the first part, hereinafter called Lessor (whether one or more individuals or one or more other entities), and  
**WHITMAR EXPLORATION COMPANY**, 555 17<sup>th</sup> Street, Suite 880, Denver, Colorado 80202, party of the second part,  
hereinafter called Lessee.

WITNESSETH, that the said Lessor, for and in consideration of Ten Dollars, cash in hand paid, and other good and valuable consideration receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of Lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said Lessee all of Lessor's rights, title and interest, together with any reversionary rights therein, in and under the lands described below (the Leasehold Premises) for the exclusive right to explore for and develop oil (including but not limited to distillate and condensate) and gas (including natural gas, casinghead gas, helium gas, coalbed methane gas, shale gas and all other constituents and forms of natural gas), subject to the understanding that Lessee may not use the surface of the Leasehold Premises for any drilling and/or production operations, and other than the use of common access roads on the Leasehold Premises for the collection of geophysical data, this Lease shall be a non-surface use lease. The Leasehold Premises covered by this lease shall include a certain Tract or Tracts of Land and/or a certain sub-division Lot or Lots situated in the Town/Village of **Big Flats**, in the County of Chemung, in the State of New York; which Tract(s), or Lot(s) are identified in the Chemung County Tax Map as tract number(s) **58.01-1-28**

Containing 000.4699 acres, more or less.

**1. LEASEHOLD PREMISES:** This lease is intended to cover all of Lessor's mineral interests in the tracts identified on the said Chemung County Tax Map as tract number(s) 58.01-1-28, whether Lessor's interest in such tracts is more or less than 000.4699 acres.

**2. TERM:** It is agreed that this lease shall remain in force for a term of **Five (5)** years from date (herein called primary term) and so long thereafter as oil or gas, or either of them, is produced from said Leasehold Premises or land with which the Leasehold Premises is pooled hereunder by the Lessee.

**3. ROYALTIES:** In consideration of the Leasehold Premises the said Lessee covenants and agrees:

A. To deliver to the credit of Lessor free of cost, in the pipeline to which it may connect its wells, a **12.5%** part of all oil (including but not limited to condensate and distillate) produced and saved from the Leasehold Premises, or, at Lessee's option, to pay Lessor a royalty of **12.5%** of the proceeds realized by Lessee from the sale thereof, less any production, severance and other excise taxes allocable to such proceeds.

B. To pay Lessor for gas (including casinghead gas and coalbed methane gas) and all other substances covered hereby, a royalty of **12.5%** of the proceeds realized by Lessee from the sale thereof, less a proportionate part of the production, severance and other excise taxes and the cost incurred by Lessee in processing, compressing, dehydrating, transporting, and marketing, or otherwise making such gas or other substances ready for sale or use, said payments to be made monthly. During any period after the primary term when gas is not being so sold, and the well or wells are shut in and there is no current production of oil or operations on said Leasehold Premises sufficient to keep this lease in force, Lessee shall pay or tender a royalty of One Dollar (\$1.00) per year per net royalty acre retained hereunder, such payment or tender to be made, on or before the later of ninety (90) days following the date of shut in or the anniversary date of this lease during the period such well is shut in, to the Lessor. When such payment or tender is made it will be considered that gas is being produced within the meaning of the entire lease.

**4. CONTINUOUS OPERATIONS:** If, at the expiration of the primary term, there is no production in paying quantities on the Leasehold Premises or on lands pooled therewith but Lessee is conducting operations for drilling, completing or reworking a well, this lease nevertheless shall continue as long as such operations are prosecuted or additional operations are commenced and prosecuted (whether on the same or successive wells) with no cessation of more than ninety (90) days, and if production is discovered, this lease shall continue as long thereafter as oil or gas are produced. In addition, if at any time or times after the primary term, there is a total cessation of all production, for any cause (other than an event of force majeure), this lease shall not terminate if Lessee commences or resumes any drilling or reworking operations or production within one hundred and eighty (180) days after such cessation. Drilling operations or mining operations shall be deemed to be commenced when the first material is placed on the Leasehold Premises or when the first work other than surveying or staking the location is done thereon which is necessary for such operations.

**5. POOLING:** Lessee is hereby granted the right at any time and from time to time to unitize the Leasehold Premises or any portion or portions thereof, as to all strata or any stratum or strata, with any other lands as to all strata or any stratum or strata, for the production primarily of oil or primarily of gas with or without distillate. However, no unit for the production primarily of oil shall embrace more than 160 acres, or for the production primarily of gas with or without distillate more than 640 acres; provided that if any governmental regulation shall permit or prescribe a spacing pattern for the development of the field or allocate a producing allowable based on acreage per well, then any such unit may embrace as much additional acreage as may be so permitted or prescribed or as may be used in such allocation of allowable. Lessee shall file written unit designations in the county in which the Leasehold Premises are located unless the pooling or unitization results from governmental order or rule, in which case no such written designation shall be required. Operations upon and production from the unit shall be treated as if such operations were upon or such productions were from the Leasehold Premises whether or not the well or wells are located thereon. The entire acreage within a unit shall be treated for all purposes as if it were covered by and included in this lease except that the royalty on production from the unit shall be as below provided, and except that in calculating the amount of any shut in gas royalties, only the part of the acreage originally leased and then actually embraced by this lease shall be counted. In respect to production from the unit, Lessee shall pay Lessor, in lieu of other royalties thereon, only such proportion of the royalties stipulated herein as the amount of his acreage placed in the unit, or his royalty interest therein on an acreage basis bears to the total acreage in the unit.

**6. SEISMIC/NON-SURFACE:** Lessor grants to Lessee and Lessee's geophysical agents the exclusive right and permission to conduct seismic operations over and across common access roads on the Leasehold Premises. Lessee and Lessee's geophysical agents are hereby granted, for both personnel and equipment, access to such roads on the Leasehold Premises for the purpose of conducting the seismic operations including, but not limited to, surveying, and the acquisition of seismic data. Lessee agrees to protect Lessor

from any and all claims and damages that may result from the seismic operations conducted hereunder. Other than collection of geophysical data as outlined above, this lease is a non-surface use lease.

**7. PROPORTIONATE REDUCTION:** If said Lessor owns a less interest in the Leasehold Premises than the entire and undivided fee simple estate therein, then the royalties herein provided shall be paid to the Lessor only in the proportion which his interest bears to the whole and undivided fee.

**8. LESSEE RIGHTS:** Lessee shall have the right to use, free of cost, gas, oil, and water produced on the Leasehold Premises for its operations thereon, except water from wells of Lessor. Lessee shall have the right at any time to remove all machinery and fixtures placed on said Leasehold Premises, including the right to draw and remove casing.

**9. ASSIGNMENT:** If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns. However, no change or division in ownership of the land or royalties shall enlarge the obligations or diminish the rights of Lessee. No change in the ownership of the land or royalties shall be binding on the Lessee until after the Lessee has been furnished with a written transfer or assignment or a true copy thereof. In case Lessee assigns this lease, in whole or in part, Lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment. Lessee, and any successor Lessee, shall have the right to assign and transfer this lease in whole or in part. All of the provisions of this lease shall inure to the benefit of and be binding upon the parties hereto, their heirs, administrators, successors and assigns. This agreement shall be binding on each of the above named parties who sign the same, and their assignees regardless of whether it is signed by any of the other parties.

**10. APPLICATION OF LAWS/FORCE MAJEURE:** All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules and Regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or such failure is the result of any such Law, Order, Rule or Regulation, or operation of force majeure. The term "force majeure" as used herein shall be Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, riots, epidemics, lightning, earthquakes, flood, or other severe weather conditions, fire, explosions, accidents or repairs to machinery or pipes, delays of carriers, inability to obtain materials or rights of way on reasonable terms, acts of public authorities, or any other cause, whether or not of the same kind as enumerated herein, not within the control of the lessee and which by the exercise of due diligence Lessee is unable to overcome.

**11. CONTRACT:** This lease shall be effective as to each Lessor or execution hereof as to his or her interest and shall be binding on those signing, notwithstanding some of the Lessors above named may not join in the execution hereof. The word "Lessor" as used in this lease means the party or parties who execute this lease as Lessor, although not named above.

**12. SURRENDER:** Lessee may at any time and from time to time surrender this lease as to any part or parts of the Leasehold Premises by delivering or mailing a release thereof to Lessor, or by placing a release of record in the proper County.

**13. WARRANTY/SUBROGATION:** Lessor hereby covenants that he and/or she and/or it is seized of an indefeasible fee simple estate in and to the mineral estate underlying the Leasehold Premises, including all the underlying oil and gas rights, and Lessor hereby agrees to warrant and defend the oil and gas leasehold estate hereby demised unto the Lessee against all adverse claims during the term of this lease, and if it is determined that Lessor does not have legal title to all or part of the subject mineral estate, Lessor will repay to Lessee any consideration paid by Lessee for this Lease as to the portion of the mineral estate not owned by Lessor. Lessor further agrees that Lessee, at its option, may pay and discharge any taxes due and/or mortgage payments due and/or other liens existing, levied or assessed on the subject lands and/or mineral estate, and in the event Lessee exercises such option, it shall be subrogated to the rights of the holder(s) thereof, and in addition to any other remedies it may have, Lessee may reimburse itself by applying to the discharge of any such mortgage, tax or other lien any royalty or rentals accruing hereunder.

**14. FORFEITURE:** The Lessee's failure to comply with any covenant or obligation of this lease shall not result in the forfeiture of the lease unless and until Lessor has provided Lessee notice of such default and gives Lessee sixty (60) days in which to cure such default.

**15. EXTENSION:** Lessee is hereby given the option to extend the primary term of this lease for an additional **Five (5)** years from the expiration of the original primary term hereof. This option may be exercised by Lessee at any time during the last year of the original primary by paying the sum of \$ **300.00** per net mineral acre to Lessor or to the credit of Lessor in the \_\_\_\_\_

Bank, at \_\_\_\_\_ (Which bank and its successors are Lessor's agents and shall continue as the depository regardless of changes in ownership of said land.) This payment shall be based upon the number of net mineral acres then covered by this lease and not at such time being maintained by other provisions hereof. This payment may be made by the check or draft of Lessee mailed or delivered to Lessor or to said bank at any time during the last year of the original primary term hereof. If such bank (or any successor bank) should fail, liquidate or be succeeded by another bank, or for any reason fail or refuse to accept payment, Lessee shall not be held in default for failure to make such payment until thirty (30) days after Lessor's delivery to Lessee of a proper recordable instrument naming another bank as agent to receive such payment. This right to extend shall be a covenant running with the Leasehold Premises, and if Lessor sells or otherwise disposes of the Leasehold Premises prior to the end of the primary term of this Lease, Lessee can extend this lease by paying Lessor's assignee(s) and/or grantee(s) the above said consideration. If, at the time this payment is made, various parties are entitled to specific amounts according to Lessee's records; this payment may be divided between said parties and paid in the same proportion. Should this option be exercised as herein provided, it shall be considered for all purposes as though this lease originally provided for a primary term of **Ten (10)** years. In the event this lease is being maintained by any other lease provisions at the expiration of the primary term, Lessee shall have a period of thirty (30) days from the date this lease ceases to be so maintained within which to exercise this option.

**16. CANCELLATION:** If this lease terminates or expires and/or if this lease is forfeited, Lessee and/or any assignee of this lease shall provide, at Lessor's written request, a document canceling this lease, and if Lessee and/or any assignee fails to cancel the lease, Lessor and/or its assignees may compel a cancellation of this lease pursuant to Section 15-304 of the New York State General Obligations Law.

**17. THIS IS A LEASE OF OIL AND GAS RIGHTS, NOT A SALE, CONTAINING TERMS THAT MAY BE NEGOTIATED BY LESSOR. LESSOR HAS THE RIGHT TO CANCEL THIS LEASE WITHIN THREE BUSINESS DAYS AFTER EXECUTION OF THE LEASE BY NOTIFYING THE LESSEE THAT LESSOR HAS CANCELLED THIS CONTRACT. IN ORDER TO CANCEL THIS LEASE, LESSOR MUST EXECUTE A NOTICE OF CANCELLATION IN**

THE FORM PROVIDED BELOW, MAIL IT TO THE LESSEE AND REFUND ALL AMOUNTS PAID TO LESSOR BY THE LESSEE WITHIN THE THREE-DAY CANCELLATION PERIOD. THE MAILING MUST BE POSTMARKED WITHIN THE THREE-DAY CANCELLATION PERIOD TO BE EFFECTIVE.

NOTICE OF CANCELLATION  
I/WE HEREBY CANCEL THIS LEASE

DATED: \_\_\_\_\_

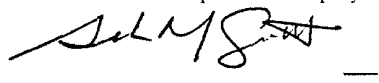
SIGNATURE: \_\_\_\_\_

THE PERSON PRESENTING THIS LEASE TO LESSOR IS (X) NOT ( ) A MEMBER OF NALA AND THEREFORE IS (X) IS NOT ( ) SUBJECT TO A CODE OF CONDUCT. IF THE PERSON PRESENTING THIS LEASE TO LESSOR IS SUBJECT TO A CODE OF CONDUCT, A COPY OF THE CODE OF CONDUCT MUST BE PRESENTED TO LESSOR WITH THIS LEASE. IF APPLICABLE, THE CODE OF CONDUCT PROVIDES A DISPUTE RESOLUTION MECHANISM FOR ANY DISPUTE THAT LESSOR MAY HAVE REGARDING THE MANNER BY WHICH THE LEASE WAS PRESENTED TO LESSOR. IF LESSOR HAS ANY SUCH DISPUTE, LESSOR MAY INVOKE THE DISPUTE RESOLUTION MECHANISM OF THE CODE OF CONDUCT BY CONTACTING THE PERSON OR PERSONS DESIGNATED IN THE CODE OF CONDUCT. THE FAILURE OF THE LESSEE TO PAY ROYALTIES TO LESSOR AS REQUIRED UNDER THE TERMS OF THE LEASE FOR A PERIOD OF FOUR CONSECUTIVE MONTHS OR MORE SHALL BE A DEFAULT UNLESS OTHERWISE PROVIDED BY LAW, AND WILL RESULT IN CANCELLATION OF THE LEASE APPLICABLE TO THE TARGET FORMATION OF THE WELL WITHIN THE SPACING UNIT, FOLLOWING WRITTEN NOTIFICATION TO THE LESSEE OF LESSORS INTENT TO CANCEL AND SIXTY DAYS FOR THE LESSEE TO CURE THE DEFAULT. IF THE LESSEE HAS A BONA FIDE DISPUTE REGARDING THE GROUNDS FOR CANCELLATION, SUCH DISPUTE AND THE REASONS THEREFORE MUST BE PROVIDED TO LESSOR IN WRITING OR THE DEFAULT MUST BE CURED WITHIN SUCH SIXTY-DAY PERIOD; OTHERWISE THE LEASE SHALL BE CANCELLED.

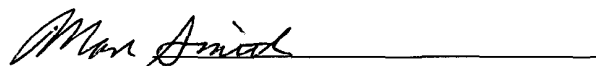
IN WITNESS WHEREOF, this instrument is executed effective as of the date first above written.

LESSEE: WhitMar Exploration Company

LESSORS:



Sarah M. Garrett



Mark E. Smith



Elvia I. Smith

ACKNOWLEDGMENT

STATE OF New York )

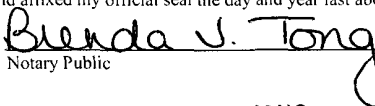
COUNTY OF Steuben ) SS:

(Individual Acknowledgment)

Before me, the undersigned, a Notary Public in and for said County/Parish and State, on this 16<sup>th</sup> day of August, 2007, personally appeared Mark & Elvia Smith to me known (or satisfactorily proven) to be the identical person(s) whose name he/she/they subscribed to the within instrument, and acknowledged that he/she/they executed the same free and voluntary act and deed, for the uses and purposes therein set forth and in the capacity herein stated.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year last above written.

My Commission Expires: 5-15-2010

  
Notary Public

BRENDA J. TONG  
Notary Public, State of New York  
No. 01TO6041963  
Qualified in Steuben County  
Commission Expires May 15, 2010